Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Truth-In-Billing and	)	
Billing Format	)	CC Docket No. 98-170
	)	
National Association of State Utility	)	
Consumer Advocates'("NASUCA")	)	
Petition for Declaratory Ruling	)	
Regarding Monthly Line Items	)	
and Surcharges Imposed	)	
By Telecommunications Carriers	)	CG Docket No. 04-208

REPLY COMMENTS OF SBC COMMUNICATIONS INC.

SBC Communications Inc. ("SBC") hereby submits these reply comments in response to the Comments of the National Association of Attorneys Generals ("NAAG") and NASUCA (hereinafter "Commenters") filed in the above-referenced proceeding.

Commenters support the broad, sweeping Truth-In-Billing ("TIB") requirements proposed by the Commission.[1] The crux of their argument is that the existing TIB rules are insufficient to protect consumers from misleading and fraudulent billing practices. Specifically, Commenters allege that: (1) carriers use line-item labels and descriptions that mislead consumers to believe that the line-item charges are government imposed, thus diminishing consumer desire to engage in comparison shopping; (2) carriers use line-item labels and descriptions that are vague and ambiguous, preventing consumers from understanding the purpose of these charges; and (3) carriers do not advise consumers that surcharges will apply, resulting in total billed charges that significantly exceed the rates quoted during the sales solicitation.[2]

[1] In particular, Commenters support rules requiring carriers to distinguish mandated and non-mandated line-item charges, separate mandated line-item charges on bills, and provide point of sale disclosures.

[2] Comments of NAAG at 3-4; Comments of NASUCA at 4-10.

As the record makes clear, the Commission's existing rules already require carriers to provide clear and non-misleading descriptions of *all* billed charges, including line-item charges. To the extent carriers are providing misleading or vague line items as Commenters allege, the Commission need only enforce its rules. If the Commission, however, agrees that its existing rules are insufficient to protect consumers, the measures proposed by the Commission and supported by Commenters go too far and are wholly unnecessary to address the purported consumer harms.

Commenters focus on the same labels to make their point that carrier line items are vague, confusing and misleading: "cost recovery," "regulatory" and "regulatory assessment fee."[3] If these labels are vague, if they confuse or mislead consumers to believe they are government-imposed, then the Commission should address them squarely: approve or prohibit their use; provide additional guidance as to why they or any other commonly used line-item descriptions comply or do not comply with the TIB rules; adopt safe harbor labels for commonly used line-item charges that carriers can opt to use;[4] or better yet, enforce the *existing* rules. The Commission in 1999 recognized that additional guidance regarding line items was necessary.[5] If any action is warranted here, the Commission, as a first step, should provide that guidance and then enforce it.

Certain carriers may have disregarded the TIB rules, as evidenced by the consumer complaints filed with the states and the FCC. However, just as many carriers, if not more, use line items that fully comply with state and federal billing requirements. These carriers should not be punished by having to implement the onerous TIB rules proposed in this proceeding. The

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[3] Comments of NAAG at 4, 10; Comments of Consumer Groups at 11; Comments of NASUCA at 21.

[4] This option would provide greater certainty to carriers and consumers without infringing upon First Amendment rights.

[5] *Truth-In-Billing and Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492, ¶40 (1999).

proposed requirements would affect the manner in which *all* carriers design and format their bills, would significantly increase costs for *all* carriers, and would negatively impact the ability of *all* carriers to competitively distinguish themselves. Any Commission remedy must account for these realities. The proposed requirements do not.

With respect to the specific proposed TIB requirements, SBC further replies as follows:

Distinguishing Mandated Charges. Commenters argue that only charges a government requires carriers to assess on consumers and remit should be considered government-mandated charges.[6] But as SBC and CCTM explained,[7] all government-remitted charges, irrespective of whether they may or must be collected from consumers, are government charges. The government – not a carrier – is the driver of these charges. Commenters are thus wrong that these charges are like other operating costs.[8] Carriers *can* avoid or decrease their operating costs by becoming more efficient. Carriers *cannot* do the same with respect to any government-remitted fee. Accordingly, carriers should be able to describe them as government charges on the bill.[9]

Separate Billing Section for Mandated Charges. NASUCA argues that a separate billing section for government charges is necessary to alleviate customer confusion, but as AT&T and CCTM correctly point out, separation requirements could generate *more* confusion.[10] For instance, it could lead consumers to believe that legitimate, "non-mandated" charges are fraudulent. Further, if remitted charges are distinguished based on whether the government

[6] Comments of the NAAG at 9; Comments of NASUCA at 12-13.

[7] Comments of CCTM at 17.

[8] Comments of NASUCA at 13.

[9] SBC also agrees with Qwest and Verizon that the Commission should dispense with the nomenclature "mandated charges" if it adopts this requirement and instead use the term "government-based charges" or "government charges." Consumers could interpret the term "mandated" in numerous ways, as Verizon and Qwest explain, resulting in greater confusion.

[10] Comments of AT&T at 6; Comments of CCTM at 16.

permits or requires them to be assessed, similar types of charges, such as taxes, would be segregated on the bill. Consumers, for example, would not understand why a utility tax and sales tax are listed in different sections of the bill when both are clearly government charges.

All carriers, and particularly wireline carriers,[11] have the incentive to provide their customers with clear bills. In fact, bill presentation and clarity are important tools used by carriers to distinguish themselves and attract and retain customers. NASUCA completely ignores this market reality. Micromanagement of carrier billing – which a separate billing section requirement would certainly be – would constrain carriers' ability to compete in this manner, and importantly, would disadvantage them vis-à-vis intermodal competitors not subject to the TIB requirements.[12] Such results would clearly be contrary to the pro-competitive goals of the 1996 Act.

Further, the requirement would prove costly and burdensome to implement. MCI, for example, estimates that it will cost $5.3 million and take twelve to eighteen months to implement a separation requirement.[13] Verizon estimates that an additional bill page, which it believes would be required if a separate billing section is mandated, would result in $34 million in extra postage costs per year, not to mention implementation costs.[14] Consumers would bear these costs. Additional guidance, clarification and enforcement of the existing rules are the better remedy.

Point of Sale Disclosures. Finally, SBC agrees with Verizon, CCTM and other wireline commenters that the Commission's proposed point of sale disclosures are unwarranted, particularly for wireline carriers. Wireline carriers such as the SBC Local Exchange Companies

[11] Most consumer wireline customers do not sign contracts for wireline services and thus can switch providers at will.

[12] Comments of CCTM at 11-12; Comments of Verizon at 7.

[13] Comments of MCI at 4.

[14] Comments of Verizon at 12.

are already required to disclose add-on charges in their tariffs or guidebooks, and further generally advise customers that taxes and surcharges will apply during the sales contact.[15] Even NAAG admits that consumer complaints regarding these carrier surcharges are in the minority.[16]

The Commission's disclosure proposal is also impractical. Taxes and surcharges vary significantly between jurisdictions and even within the same jurisdiction, depending on the customer and the services purchased.[17] The ordering and billing systems of many carriers either do not provide this information, or are incapable of providing such information on a real-time basis.[18] Consequently, sales representatives would have to manually ascertain and calculate the applicable taxes and fees to provide an accurate quote or reasonable estimate of the surcharges during the sales contact. This is a recipe for disaster. While many customers purchase bundled packages, where it arguably may be easier to provide an estimate of the applicable surcharges, many customers do not. Thus, the actual surcharges could vary significantly depending on the type and quantity of services purchased. These wide variances render any threshold – 10%, 25% or other – for estimated charges unworkable. Even with extensive training of sales personnel, inaccurate rate disclosures or estimates would be likely.

The goal is to ensure that consumers are aware that surcharges apply. This can be accomplished by simply requiring all carriers to disclose that surcharges and taxes will apply at the point of sale. This action alone would eliminate a significant number of the consumer complaints alleged by Commenters.[19] To the extent consumers desire additional information and so inquire, wireline carriers have every incentive to provide consumers sufficient information

[15] *See* Comments of CCTM at 13; Comments of MCI at 11; Comments of Verizon at 10.

[16] *See* Comments of NAAG wherein they assert that CMRS providers' failure to disclose surcharges at the point of sale are "at the heart of much consumer confusion and related complaints." Comments of NAAG at 3.

[17] Comments of Verizon at 8-9.

[18] *Id.* at 11 fn.8.

[19] For example, NAAG argues that most consumers complain about not being advised of add-on charges at the point of sale. Comments of NAAG at 3.

regarding their charges to retain them, given that their customers generally are not bound by contracts. Moreover, since the predominant CMRS providers – Sprint, Verizon Wireless, and Cingular – have already agreed to point of sale disclosures in most states, consumer complaints regarding the lack of add-on disclosures should decrease tremendously. Specific, mandatory point of sale disclosures are thus unnecessary.

CONCLUSION

For the foregoing reasons, the Commission should not adopt the TIB requirements described herein. If action is warranted, the Commission should provide additional guidance and clarification regarding the use of line items and proactively enforce its rules.

Respectfully submitted,

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